IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of	Conf. No.: 8298
MIZUKI et al	Atty. Ref.: LB-723-1504
Serial No. 10/825,180	TC/A.U.: 3714
Filed: April 16, 2004	Examiner: Leiva, Frank M.

For: IMAGE PROCESSING APPARATUS AND STORING MEDIUM THAT STORES IMAGE PROCESSING PROGRAM

* *

July 23, 2010

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

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(I) REAL PARTY IN INTEREST

The real party in interest is Nintendo Co., Ltd., a corporation of the country of Japan.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1-2 and 4-10 are pending and have been rejected. The rejections of claims 1-2 and 4-10 are being appealed. No claims have been substantively allowed.

(IV) STATUS OF AMENDMENTS

An Amendment was filed on April 22, 2010 after the Final Rejection of January 25, 2010. It was indicated in the Advisory Action issued May 13, 2010 that the amendment of April 22, 2010 was entered for purposes of appeal (the Claims Appendix includes the amendments of April 22, 2010).

(V) SUMMARY OF CLAIMED SUBJECT MATTER

A listing of the representative independent claims and each dependent claim argued separately is provided below including exemplary, but not limiting, reference(s) to reference numerals, Figure(s) and page and line number(s) of the specification.

The invention of the claims relates to an image processing apparatus that displays an image of various operating objects in a virtual three-dimensional space, wherein the viewpoint location for each operating object is set such that each of a plurality of operating objects, all having different sizes, is displayed to have approximately the same size (e.g., Figs. 8-11, p. 15, line 22 to p. 16, line 11).

Claim 1 relates to an image processing apparatus 10 that displays on a display 34 an image in which an operating object A, B, C appearing in a virtual three-dimensional space is seen from a predetermined viewpoint location E (Figs. 2, 6, p. 3, line 23 to p. 4, line 12), comprising:

an operation controller 22 operated by a player (e.g., Fig. 2, p. 8, lines 10-21);

selecting programmed logic circuitry (e.g., 36, 70a in Fig. 4) for selecting the operating object A, B, C appearing in said virtual three-dimensional space, out of a plurality of the operating objects different in size, based on an operation of said operation controller 22 (e.g., p. 13, lines 17-24, p. 17, lines 1-5);

viewpoint-location setting programmed logic circuitry (e.g., 36, 70b in Fig. 4) for setting the viewpoint location E in correspondence with said operating object A, B, C, selected by said selecting programmed logic circuitry (e.g., Fig. 6, p. 17, line 14 to p. 18, line 6); and

image displaying programmed logic circuitry (e.g., 42, 36, 70c in Fig. 4) for displaying a three-dimensional image including said operating object A, B, C, based on said viewpoint location E set by said viewpoint-location setting programmed logic circuitry (e.g., Fig. 6, p. 18, lines 7-14);

wherein said viewpoint-location setting programmed logic circuitry (e.g., 36, 70b in Fig. 4) sets the viewpoint-locations E in such a manner so that each of operating objects A, B, C, selected by said selecting programmed logic circuitry (e.g., 36, 70a in Fig. 4) is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size (e.g., Figs. 8-11, p. 10, lines 3-17).

Claim 6 relates to a storing medium 16 that stores an image processing program 70 to be executed by an image processing apparatus 10 that is provided with an operation controller 22 operated by a player, and displays on a display 34 an image in which an operating object A, B, C, appearing in a virtual three-dimensional space is seen from a predetermined viewpoint location E, said image processing program 70 allows a computer 36 of said image processing apparatus 10 to execute (Figs. 2, 6, p. 3, line 23 to p. 4, line 12):

selecting (e.g., steps S3, S5) the operating object A, B, C, appearing in said virtual three-dimensional space, out of a plurality of the operating objects different in size, based on an operation of said operation controller 22 (e.g., p. 13, lines 17-24, p. 17, lines 1-5);

setting the viewpoint location (e.g., steps S11, S13, S15) in correspondence with said operating object A, B, C, selected by said selecting (e.g., Fig. 6, p. 17, line 14 to p. 18, line 6); and

displaying (e.g., steps S17, S19) a three-dimensional image including said operating object A, B, C, selected by said selecting based on said viewpoint location set by said viewpoint-location setting (e.g., Fig. 6, p. 18, lines 7-14); wherein

said setting the viewpoint-location E sets the viewpoint-locations in such a manner so that each of operating objects A, B, C, selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size (e.g., Figs. 8-11, p. 10, lines 3-17).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(i) Whether claims 1 and 6 are anticipated under 35 U.S.C. §102(b) by Takahashi et al. (WO 6,354,944).

(ii) Whether claims 2, 4-5 and 7-10 are anticipated under 35 U.S.C. §102(b) by Takahashi et al. (WO 6,354,944).

(VII) ARGUMENT

(i) Whether claims 1 and 6 are anticipated under 35 U.S.C. §102(b) by Takahashi et al. (WO 6,354,944).

It is axiomatic that in order for a reference to anticipate a claim, it must disclose, teach or suggest each and every feature recited in the claim. See, e.g., *Kalman v. Kimberly-Clark Corp*., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). The USPTO has the burden in this respect.

Regarding claim 1, Takahashi does not disclose, teach or suggest "wherein said viewpoint-location setting programmed logic circuitry sets the viewpoint-locations in such a manner so that each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately *the same size*, even if any one operating object is selected out of said plurality of operating objects *different in size*", as required by claim 1 (similarly for claim 6).

In Takahashi, each particular object is made to appear as to have the same size regardless of its position in the virtual space, by moving the distance of the virtual camera from the object. More specifically, in Takahashi, the set position of the virtual camera from the player character depends on the size of the player character (see col. 10, lines 21-25). In other words, if the player character is large, then the distance of the virtual camera from the player character is set to be large. On the other hand, if the size of the player character (i.e., that same player character) is small, then the distance of the virtual camera from the player character

is set to be small. In Takahashi, this adjustment of the distance of the virtual camera is done for a particular player character.

However, Takahashi does not teach that all of the different characters regardless of their size ("even if any one operating object is selected out of said plurality of operating objects different in size", as required by claim 1) are made to appear as having the same size by appropriately changing the viewpoint location for each object.

For example, Figs 8-11 of the instant specification show exactly this feature. Fig. 8 shows three different objects having different size before the viewpoint location for each one has been adjusted according to the invention of claim 1. Object A is seen as large, object B is seen as medium sized and object C is seen as small (see the explicit recitation of "operating object appearing in said virtual three-dimensional space, out of a plurality objects different in size", in claims 1 and 6). After the process of the invention of claim 1 is performed, the view point location for each of the objects A, B and C is set such that all the objects appear to have the same size (see Fig. 9-showing object A, Fig. 10-showing object B, and Fig. 11-showing object C). As can be seen from Figs. 9-11, all objects appear to have approximately the same size, even though before the application of the claimed process they had different sizes (A > B > C).

Takahashi merely teaches how to maintain the displayed size of a particular object with respect to itself (e.g., the character shown in Figs. 7-9 of Takahashi in various positions). In fact, Takahashi teaches away from the above feature of claim 1 in Figs. 11-13 of Takahashi. These Figures show how the scene displaying the main character Ch and an enemy character Ch1 is seen when the viewpoint location of the camera for the

main character is at C1 in Fig. 10 (corresponding to Fig. 11), C2 (corresponding to Fig. 12) and C3 (corresponding to Fig. 13), see col. 12, lines 32-50. As it can be clearly seen, the respective sizes of the displayed objects Ch and Ch1, Ch and Ch2, and Ch and Ch3, are not the same in these Figures.

Takahashi is concerned with keeping focus on a particular player character so that its size does not change considerably regardless of its position in the game space, not on ensuring that every selected player character appears to have the same size, regardless of the size of the selected player character.

The Examiner stated that "applicant admits that Takahashi does adjust the characters to have the same size regardless of their true size and it is for the viewing by the player only, as is with the present invention", and also stated that "the claims do not recite the limitation 'all of the different characters are made to appear as having the same size regardless of their size', as argued", see Advisory Action of May 13, 2010.

It appears that the Examiner confuses the adjustment of a particular game character so that it appears to have the same size regardless of its position in the virtual space, taught in Takahashi, with the adjustment of each of the game characters so that all appear to have the same size, taught in the invention of claim 1. As explained above, Takahashi merely teaches to maintain the displayed size of a **particular** object with respect to **itself** (e.g., the character shown in Figs. 7-9 of Takahashi in various positions). In contrast, and as can be seen from Figs. 9-11 of the instant specification, all **different** objects (e.g., objects A, B, C in Fig. 8 of the instant specification) appear to have approximately the same size (e.g., see Figs. 9-11), even though before the application of the claimed process they had different sizes.

As can be seen from Figs. 9-11 of the instant specification, each operating object A, B, and C, is displayed having approximately the same size. Therefore, the range obstructed by the operating object itself is approximately the same, for all operating objects, therefore, it is possible to provide the same game aspect regardless of the selected operation object, thus enhancing the viewing capability of the game. In contrast, in Takahashi, in the case of a large-sized operating object A, the range obstructed by the operating object itself is too large, so that a front area of the course, too, is significantly hidden, thus the player finds it difficult to see what lies ahead. Or, in the case of a small-sized operating object C, the impact of the operating object to the game is lost. Moreover, for example, in a fighting game, a feeling of unfairness occurs as a result of operating objects different in size relative to each being selected. The maintenance of the displayed size of a particular operating object, taught by Takahashi, does not obviate the above problems in the prior art.

Regarding the Examiner's assertion that the claim language does not explicitly recite "all of the different characters are made to appear as having the same size regardless of their size", Appellant submits that the actual claim language "each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size" is essentially the same as the above claim language stated by the Examiner.

For at least the above reasons, claim 1 is allowable. Claim 6 includes limitations similar to those of claim 1 and is also allowable.

(ii) Whether claims 2, 4-5 and 7-10 are anticipated under 35 U.S.C. §102(b) by Takahashi et al. (WO 6,354,944).

Claims 2, 4-5 and 7-10 are dependent on claim 1 or 6, and are in condition for allowance at least because the claim from which they depend (claim 1 or 6) is in condition for allowance.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. An image processing apparatus that displays on a display an image in which an operating object appearing in a virtual three-dimensional space is seen from a predetermined viewpoint location, comprising:

an operation controller operated by a player;

selecting programmed logic circuitry for selecting the operating object appearing in said virtual three-dimensional space, out of a plurality of the operating objects different in size, based on an operation of said operation controller;

viewpoint-location setting programmed logic circuitry for setting the viewpoint location in correspondence with said operating object selected by said selecting programmed logic circuitry; and

image displaying programmed logic circuitry for displaying a three-dimensional image including said operating object based on said viewpoint location set by said viewpoint-location setting programmed logic circuitry,

wherein said viewpoint-location setting programmed logic circuitry sets the viewpoint-locations in such a manner so that each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size.

2. An image processing apparatus according to claim 1, further comprising:

viewpoint-location-data storing locations for storing each viewpoint location data correlated with each of said plurality of the operating objects; wherein

said viewpoint-location setting programmed logic circuitry reads out from said viewpoint-location-data storing locations said viewpoint location data corresponding to said operating object selected by said selecting programmed logic circuitry to set said viewpoint location.

4. An image processing apparatus according to claim 2, wherein

said viewpoint location data includes distance data from a point-of-regard,

said viewpoint-location setting programmed logic circuitry reads out said distance data corresponding to said operating object selected by said selecting programmed logic circuitry to set said viewpoint location.

5. An image processing apparatus according to claim 2, wherein

said viewpoint location data includes angle data or height data from the point-of-regard,

said viewpoint-location setting programmed logic circuitry reads out said angle data or said height data corresponding to said operating object selected by said selecting programmed logic circuitry to set said viewpoint location.

6. A storing medium that stores an image processing program to be executed by an image processing apparatus that is provided with an operation controller operated by a player, and displays on a display an image in which an operating object appearing in a virtual three-dimensional space is seen from a predetermined viewpoint location, said

image processing program allows a computer of said image processing apparatus to execute :

selecting the operating object appearing in said virtual three-dimensional space, out of a plurality of the operating objects different in size, based on an operation of said operation controller;

setting the viewpoint location in correspondence with said operating object selected by said selecting; and

displaying a three-dimensional image including said operating object selected by said selecting based on said viewpoint location set by said viewpoint-location setting, wherein

said setting the viewpoint-location sets the viewpoint-locations in such a manner so that each of operating objects selected by said selecting programmed logic circuitry is displayed to have approximately the same size, even if any one operating object is selected out of said plurality of operating objects different in size.

7. A storing medium that stores an image processing program according to claim 6, said image processing apparatus further comprises viewpoint-location-data storing locations for storing each viewpoint location data correlated with each of said plurality of the operating objects; wherein said viewpoint-location setting reads out from said viewpoint-location-data storing locations said viewpoint location data corresponding to said operating object selected by said selecting so as to set said viewpoint location.

8. A storing medium that stores an image processing program according to claim 7, wherein

each of said viewpoint location data is set in such a manner as to be displayed as the operating object approximately the same in size even if any one of the operating objects is selected by said selecting.

9. A storing medium that stores an image processing program according to claim 7, wherein

said viewpoint location data includes distance data from a point-of-regard,

said viewpoint-location setting reads out said distance data corresponding to said operating object selected by said selecting so as to set said viewpoint location.

10. A storing medium that stores an image processing program according to claim 7, wherein

said viewpoint location data includes angle data or height data from the point-of-regard,

said viewpoint-location setting reads out said angle data or said height data corresponding to said operating object selected by said selecting so as to set said viewpoint location.

(IX) EVIDENCE APPENDIX

None.

(X) RELATED PROCEEDINGS APPENDIX

None.